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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85620; File No. SR-NYSEARCA-2019-25]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the NYSE Arca Options Fee Schedule**

April 11, 2019.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on April 9, 2019, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (“Fee Schedule”). The Exchange proposes to implement the fee change effective April 9, 2019.<sup>4</sup> The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> On March 29, 2019, the Exchange filed to amend the Fee Schedule for effectiveness on April 1, 2019 (SR-NYSEArca-2019-20) and withdrew such filing on April 9, 2019.

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Fee Schedule, effective April 9, 2019, to amend the criteria for achieving a discount on the LMM Rights Fee.

The LMM Rights Fee ("Rights Fee") is charged "on a per issue basis to the OTP Firm acting as LMM in the issue."<sup>5</sup> The Exchange charges a Rights Fee on each issue in a LMM's allocation, with rates based on the Average National Daily Customer Contracts. LMMs are also able to achieve a 50% discount to their total monthly Rights Fee by achieving daily contract volume traded electronically of at least 0.40% Total Industry Customer equity and ETF option ADV ("TCADV), of which 0.08% TCADV are in its LMM appointment (the "Discount").<sup>6</sup> The

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<sup>5</sup> See Fee Schedule, Endnote 2, [available here, https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE\\_Arca\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf). See also, Fee Schedule, NYSE Arca General Options and Trading Permit (OTP) Fee, Lead Market Maker Rights Fee. Because the Fee Schedule already reflects that Endnote 2 applies to all issues in an LMM's appointment, regardless of the Average National Daily Customer Contracts, the Exchange proposes to remove the references to Endnote 2 that appear next to the Rights Fee for issues with applicable volume of 0 - 2,000. See proposed Fee Schedule, NYSE Arca General Options and Trading Permit (OTP) Fee, Lead Market Maker Rights Fee.

<sup>6</sup> See *id.* (providing the Discount criteria). The Exchange also offers activity-based discounts (*i.e.*, on total electronic volume and total posted volume) to LMMs with the most actively traded issues in their appointment. The Discount is applied to the total monthly rights fee after any such discounts are applied. The Exchange is not proposing any changes to the activity-based discounts to the LMM Rights Fee.

Exchange proposes to modify the criteria for achieving the Discount in two ways. First, the Exchange proposes to reduce the minimum TCADV threshold from 0.40% to 0.32%, but still require that 0.08% TCADV be in its LMM appointment.<sup>7</sup> The Exchange also proposes to add an alternative means of achieving the Discount. As proposed, if an LMM achieves at least 0.75% of TCADV in manual transactions in all account types, which may include “transaction volume from the OTP Holder’s or OTP Firm’s affiliates (per Endnote 8) or Appointed OFP (per Endnote 15),” which Endnotes define affiliates and Appointed OFPs, respectively, that LMM could also qualify for the Discount.<sup>8</sup> The Exchange would continue to determine whether an LMM qualifies for the Discount based on the daily contract volume traded electronically in a calendar month. The Exchange proposes to further amend the Fee Schedule so that it would determine whether the LMM qualifies for the Discount by also assessing the daily contract volume traded manually by an LMM and affiliated/appointed entities each trading day in a calendar month.<sup>9</sup>

The Exchange believes the proposed modifications would encourage LMMs to apply for issues to be added to their appointment, and to encourage participation in manual transactions.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act, in

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<sup>7</sup> See proposed Fee Schedule, Endnote 2. The Exchange also proposes to restructure the sentence regarding the Discount to put the amount of the Discount first, followed by the criteria needed to achieve the discount, which would add clarity and transparency to the Fee Schedule making it easier to navigate and comprehend. See *id.*

<sup>8</sup> See *id.* Endnote 8 of the Fee Schedule cites to Rule 1.1(a), which defines an affiliate as being a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified). Endnote 15 of the Fee Schedule, an “Appointed OFP” is an OFP that has been designated by an NYSE Arca Market Maker for purposes of the Fee Schedule.

<sup>9</sup> See proposed Fee Schedule, Endnote 2.

particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that providing modifications to the Rights Fee is reasonable, equitable, and not unfairly discriminatory because, among other things, it makes the Discount more achievable by lowering the threshold for electronic transactions and providing an alternative means of achieving the Discount based on manual transactions. The proposed Discount is not unfairly discriminatory because Rights Fees are only assessed on LMMs and there is only one LMM per issue. The proposed reduction of the existing qualifying threshold would make the Discount more achievable for LMMs and may encourage LMMs to apply for issues to be added to their appointment. The proposed new alternative threshold, which allows LMMs to pool their manual volume with affiliates and/or Appointed OFPs, is reasonable, equitable, and not unfairly discriminatory because it would encourage participation in manual transactions. Any increase in volume executed in open outcry on the Exchange would benefit all market participants by expanding liquidity and providing more trading opportunities, even to market participants that do not execute manual transactions. The Exchange notes that allowing market participants to aggregate volume with affiliates or Appointed OFPs (or Appointed Market Makers) is not new or novel, as the Exchange allows OTPs to aggregate such volume for purposes of meeting certain pricing Tiers/Incentives.<sup>10</sup> The Exchange believes that the qualifying

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<sup>10</sup> See e.g., NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS (which sets forth the various programs for achieving certain credits based on posted volume, each of which cite Endnote 8, which provides that “calculations for qualifications for monthly posting credits or discounts only include electronic executions and the Exchange will include the activity of either (i) affiliates or (ii) an Appointed OFP or Appointed MM, per Endnote 15”). See Fee Schedule Endnote 15 for description of affiliates and Appointed OFPs and Appointed MMs.

threshold for this alternative basis for achieving the Discount is reasonable, equitable, and not unfairly discriminatory because it is more than double the proposed new threshold that is based solely on LMM volume (i.e., 0.32% v. 0.75%) and therefore ensures that LMMs that do not have affiliates/Appointed OFPs and/or do not transact significant manual volume would continue to have the ability to meet the criteria for the Discount.

The Exchange believes the proposed modification would provide meaningful criteria for LMMs to qualify for credits for executing desired volume on the Exchange, and provides additional incentive for LMMs to have affiliated or appointed order flow directed to the Exchange.

The Exchange believes that the technical change to remove extraneous and potentially confusing references to Endnote 2 in regards to the LMM Rights Fee as well as to reorganize the sentence that explains the Discount and its qualification criteria would add clarity, transparency and internal consistency to the Fee Schedule making it easier for market participants to navigate and comprehend.<sup>11</sup>

#### B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. First, because the LMM Rights Fee is charged only to LMM firms, market participants other than LMM firms are not directly impacted by this change. The Exchange believes that the proposal to adjust the criteria (and add new basis) for LMMs to qualify for the Discount (making it more achievable) may encourage LMMs to apply for issues to be added to their appointment and may attract additional liquidity to the Exchange (including

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<sup>11</sup> See supra nn. 5, 7.

open outcry transactions). To the extent this result is achieved, the increase in volume would benefit all market participants by providing more trading opportunities, including to market participants that do not execute manual transactions. The Exchange does not believe that the proposed changes would impair the ability of any market participants or competing order execution venues to maintain their competitive standing in the financial markets. The Exchange believes the proposed modification provides additional incentive for LMMs to have affiliated or appointed order flow directed to the Exchange, which benefits all market participants. To the extent that an LMM does not have any affiliates or an Appointed OFP, the LMM is still able eligible for the Discount by achieving the modified (and reduced) TCADV criteria.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>12</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>13</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>14</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2019-25 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2019-25. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the

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<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2019-25, and should be submitted on or before **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE *FEDERAL REGISTER*]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

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<sup>15</sup> 17 CFR 200.30-3(a)(12).

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